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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Southern Counties Oil Company,

10 Plaintiff,

11 v.

12 Lucas Henry, et al.,

13 Defendants.
14

No. CV-18-02307-PHX-DWL

ORDER

15 The Court has an independent obligation to determine on its own initiative whether
16 it has subject-matter jurisdiction. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583
17 (1999). Pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure, “[i]f the court
18 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the
19 action.”

20 Diversity jurisdiction exists when there is complete diversity of citizenship between
21 the plaintiff and the defendants and the amount in controversy exceeds \$75,000, exclusive
22 of interests and costs. 28 U.S.C. § 1332. A controversy meets this requirement when “all
23 the persons on one side of it are citizens of different states from all the persons on the other
24 side.” *Strawbridge v. Curtiss*, 7 U.S. 267 (1806). “[A]n LLC is a citizen of every state of
25 which its owners/members are citizens.” *Johnson v. Columbia Properties Anchorage, LP*,
26 437 F.3d 894, 899 (9th Cir. 2006).

27 “[T]he party asserting diversity jurisdiction bears the burden of proof.” *Lew v.*
28 *Moss*, 797 F.2d 747, 749 (9th Cir. 1986). In an action in which the plaintiff asserts


1 diversity, the complaint must allege the citizenship of every member of any plaintiff that
2 is a limited partnership or LLC, *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 611 (9th
3 Cir. 2016), and must plead that each defendant is completely diverse. *Carolina Cas. Ins.*
4 *Co. v. Team Equip., Inc.*, 741 F.3d 1082, 1087 (9th Cir. 2014). Where defendants are
5 limited partnerships or LLCs, the plaintiff may allege the diversity of defendants “on
6 information and belief” if plaintiff cannot reasonably ascertain the citizenship of each
7 member of each defendant limited partnership or LLC. *Id.*

8 On December 18, 2018, Plaintiff Southern Counties Oil Co. (“SC Fuels”) filed its
9 First Amended Complaint (Doc. 52), adding Fuelco Energy, LLC as a Defendant and
10 alleging that “Defendant Fuelco Energy, LLC (‘Fuelco’) is an entity with citizenship in
11 Houston, Texas, as SC Fuels is informed and believes and based thereon alleges that this
12 is where Fuelco is headquartered and has its principal place of business.” (Doc. 52 at 3.)
13 This allegation does not properly plead facts that give rise to diversity jurisdiction, as the
14 citizenship of an LLC is based on the citizenship of its various members. SC Fuels failed
15 to allege that the members of Fuelco are completely diverse. The Court will allow SC
16 Fuels to file a Second Amended Complaint to correct its defective allegations of
17 jurisdiction. *See NewGen*, 840 F.3d at 612 (“Courts may permit parties to amend defective
18 allegations of jurisdiction at any stage in the proceedings.”). Accordingly,

19 **IT IS ORDERED** that by **January 11, 2019**, SC Fuels shall file a Second Amended
20 Complaint, properly alleging diversity jurisdiction.

21 **IT IS FURTHER ORDERED** that if SC Fuels fails to timely file its Second
22 Amended Complaint, the Clerk of the Court shall dismiss Fuelco as a party (*see* Rule 21
23 of the Federal Rules of Civil Procedure) on **January 14, 2019**.

24 Dated this 2nd day of January, 2019.

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Dominic W. Lanza
United States District Judge